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Elimination of racism and racial discrimination: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating defamation of religions

Report of the Secretary-General*

Summary

The present report is submitted in accordance with General Assembly resolution 62/154 and focuses on measures and activities undertaken by Member States, United Nations human rights mechanisms and treaty bodies, United Nations bodies, regional organizations, national human rights institutions and non-governmental organizations on the implementation of the resolution.

* The present report was submitted late in order to reflect recent developments.

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I. Introduction

1. In its resolution 62/154, the General Assembly expressed its deep concern about the negative stereotyping of religions and manifestations of intolerance and discrimination in matters of religion or belief still in evidence in the world. In paragraphs 10 and 11, the Assembly emphasized "that everyone has the right to hold opinions without interference and the right to freedom of expression, and that the exercise of these rights carries with it special duties and responsibilities and may therefore be subject to limitations as are provided for by law and are necessary for respect of the rights or reputations of others, protection of national security or of public order, public health or morals and respect for religions and beliefs". The Assembly also urged "States to take action to prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".

2. In paragraph 19 the General Assembly requested the Secretary-General to submit to it, at its sixty-third session, a report on the implementation of the resolution, including on the possible correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world.

3. At the sixty-second session, the Secretary-General submitted a report in accordance with resolution 61/164, in which the Assembly requested the Secretary-General to submit a report on the implementation of that resolution. In that report, the Secretary-General focused on measures and activities undertaken by States, the Office of the United Nations High Commissioner for Human Rights, human rights mechanisms and national human rights institutions with regard to defamation of religions.

4. In preparing the present report, the Office of the United Nations High Commissioner for Human Rights (OHCHR) sent notes verbales to Member States, United Nations bodies, regional organizations, national human rights institutions and non-governmental organizations, requesting information on the implementation of resolution 62/154 to be received by 24 June 2008.

5. Following the request, OHCHR received contributions from 13 Member States, namely, Argentina, Bahrain, Burkina Faso, Cuba, Egypt, Georgia, Greece, Iran (Islamic Republic of), Lebanon, Oman, Russian Federation, Qatar and the United States of America. Contributions were also received from 2 United Nations bodies, 2 regional organizations, 2 national human rights institutions and 9 non-governmental organizations in consultative status with the Economic and Social Council. The information received by all contributors is summarized in the present report. The original text of the contributions is available for consultation at the Secretariat.

II. Contributions received

A. Member States

Azerbaijan

6. Azerbaijan submitted information on various provisions of its Constitution, which protects against discrimination on the basis of religion. In this regard,

reference is made to article 18, providing that religion in the Azerbaijan Republic is separated from the State. All religions are equal before the law and spreading propaganda of religion, humiliating people's dignity and contradicting the principles of humanism are prohibited. Article 25 stipulates that all people are equal with respect to the law and the courts. Article 47, which concerns freedom of thought and speech, stipulates that everyone may enjoy freedom of thought and speech and that propaganda provoking racial, national, religious and social discord and animosity is prohibited.

7. The Criminal Code provides, under article 283, that anyone who engages in incitement to hatred on the basis of, inter alia, religion would face a financial penalty or imprisonment of up to five years. Azerbaijan stated that it intends to play an important role in interreligious dialogue at the international level.

Argentina

8. In its contribution, Argentina stated that freedom of religion is guaranteed under several articles of the Constitution. For instance, article 14 establishes that all the inhabitants of the nation are entitled to profess their religion. Article 19 establishes that private actions of men which in no way offend public order or morality, nor injure a third party, are only reserved to God and are exempted from the authority of judges. No inhabitant of the nation shall be obliged to perform what the law does not demand nor deprived of what it does not prohibit. Article 20 establishes that foreigners enjoy within the territory of the nation all the civil rights of citizens. They may practice their religion freely.

9. Several international human rights instruments related to freedom of religion apply in Argentina since article 75/22 of the Constitution provides that treaties and concordats have a higher hierarchy than laws. Argentina also stated that it recognizes the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and the "religious cosmovision" of indigenous peoples.[1]

Bahrain

10. In its contribution, Bahrain reported that its national vision is to construct a forward-looking and closely knit Islamic society based on an Islamic approach that is characterized by moderation, temperance and support for national unity and dialogue among civilizations. The Ministry of Justice and Islamic Affairs is responsible for promoting this vision. In this regard, the mission of the Ministry is to work in the service of the Holy Koran, disseminating Islamic culture on the basis of a moderate and contemporary conception of Islam, overseeing the organization of mosques, developing *awqaf* (religious endowments) and resources from the *zakat* (alms-tax) and improving the quality of services for pilgrims who undertake the *hajj* (annual pilgrimage to Mecca during the pilgrimage season) and the *umrah* (pilgrimage outside pilgrimage season). Within this overall goal, the strategy of the Ministry of Justice and Islamic Affairs is to improve relations among human beings and, to that end, the Ministry's academic and religious knowledge programmes have been designed to familiarize non-Muslims with Islam and the sacred tenets and

[1] Argentina submitted the same contribution to the request for information pertaining to the implementation of Human Rights Council resolution 7/19 and General Assembly resolution 62/154.

noble humanitarian principles of Islam. The Fatih Islamic Centre, overseen by the Ministry of Justice and Islamic Affairs, seeks to familiarize the public with Islamic principles as a means of strengthening dialogue and peaceful coexistence among different religions and civilizations.

11. Under the sponsorship of His Majesty King Hamad Bin Isa Al Khalifa, the King of Bahrain, and His Royal Highness Sheikh Abdullah Bin Khalid Al Khalifa, the Deputy Prime Minister, the Ministry of Justice and Islamic Affairs has organized several conferences to promote dialogue. An international conference on dialogue between Islam and Christianity made several recommendations on respect for religions and their adherents and symbols. Another international conference on ways of drawing the different schools of Islamic law closer together recommended, inter alia, that greater emphasis should be placed on ensuring and supporting a culture of respect for others, peaceful coexistence and dialogue, while rejecting all expressions of contempt for, and attempts to misrepresent, others.

12. The Ministry also organized workshops and other activities and special events aimed at promoting Islamic discourse and training promoters of the Islamic faith and preachers to contribute positively to the formation of stronger bonds between all members of the human family, whatever their beliefs and without discrimination. The Ministry has also organized research competitions, on "Religious discourse and contemporary reality", and on the rejection of sectarianism. The Ministry also established an exchange programme between religious scholars from the Kingdom of Bahrain and the United States of America to promote dialogue.

13. In 2008, the Ministry will organize special courses for imams, preachers and promoters of the Islamic faith on themes including dialogue and openness and respect for others, their ideas and the things that they hold sacred. The Ministry is preparing a number of informational programmes, for dissemination via the audio-visual and print media, to promote the concept of moderate thinking. The Ministry produces a periodical on moderate thinking and enhancement of dialogue which features articles by Islamic thinkers from a wide spectrum of religious schools across the Islamic world.[2]

Burkina Faso

14. Burkina Faso expressed its support for General Assembly resolution 62/154 in the light of the impact religious problems, especially those connected to defamation, could have on world peace. The Constitution of Burkina Faso protects freedom of conscience and religion. Concerning the prohibition of defamation of religions, several institutional structures contribute to combating defamation of religions.

15. In the field of information, there exists a High Council for Communication, which regulates information that is made accessible by different organs of the press whether public or private. The High Council ensures that the prohibition imposed by the Information Code against propaganda of a defamatory nature or which serves to advocate hatred and violence is enforced. Thus far, no measure linked to defamation

[2] In a note verbale accompanying its contribution, the Kingdom of Bahrain stated that it is submitting a report on defamation of religions pursuant to two notes verbales sent by OHCHR requesting information on the implementation of Human Rights Council resolution 7/19 and General Assembly resolution 62/154. The contribution from Bahrain is included in both the report to the Human Rights Council and the present report.

of religions has been taken against the media in the light of the harmonious relationship the various religious communities enjoy.

16. Burkina Faso stated that the National Committee of Ethics aims at ensuring social cohesion, respect for cultural and religious diversity and promoting peace. The Commission for Islamo-Christian Dialogue encourages members of the two religious communities to respect their differences and participate in one another's religious celebrations. A third structure, the Convention on Peace Initiatives is preparing an early warning system, which will facilitate the identification of emerging conflicts and proposals to prevent them.

Cuba

17. Cuba noted that Muslims are increasingly the subject of discrimination individually and collectively since the events of September 11. In addition to the negative image of Islam projected by the mass media, discriminatory laws directed exclusively at Muslims have been adopted in some countries. According to Cuba, the most visible facets of Islamophobia can be observed in security policies and counter-terrorism measures. Cuba is respectful of all religious beliefs and protects religious practices, and freedom of religion and conscience is guaranteed to every citizen. Article 294 of the Penal Code sanctions public servants with up to two years' imprisonment for violations of the right of freedom of religion. In 1992, Cuba eliminated from its Constitution references to scientific atheism and established absolute separation between Church and State.

Egypt

18. Egypt asserted that defamation of religions and religious discrimination/hatred/intolerance are two interconnected issues. Defamation of religions constitutes a form of incitement to religious hatred, hostility and violence against followers of these religions, which in turn lead to the denial of their fundamental rights. In this connection, Egypt cited the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in their joint report to the Human Rights Council in which they stated that "the right to freedom of expression can legitimately be restricted for advocacy that incites to acts of violence or discrimination against individuals on the basis of their religion".[3] On this basis, Egypt submitted that combating religious discrimination requires a particular focus on preventing the direct and indirect consequences of defamation of religions.

19. Egypt asserted that States have an obligation to address acts of advocacy to religious hatred perpetrated by non-State actors in the implementation of their positive obligation under article 20 of the International Covenant on Civil and Political Rights and to prohibit such acts which constitute incitement to discrimination, hostility or violence.

20. Egypt submitted that combating incitement to religious discrimination/hatred and freedom of expression are non-mutually exclusive concepts. In this regard, the ability of individuals to express their views on any matter is a prerequisite for democratic governance. However, Egypt stated, democratic societies have nonetheless found it necessary to limit or restrict freedom of expression in

[3] A/HRC/2/3, para 37.

protection of certain rights or values. This, however, should be done in a clearly defined and limited manner and should always be proportionate to the desired objective. Under international human rights law, freedom of expression is not absolute and should be exercised with responsibility and may be subject to necessary limitations as provided by law. International human rights law also provides for the prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Egypt is convinced that continued dialogue among countries is the best way to overcome existing differences in perception with regard to how best to deal with this important issue.

Georgia

21. Georgia referred to several articles of the country's Constitution which provide for the protection of religious freedom and against discrimination. Article 19 guarantees protection of the freedom of speech, thought and conscience, and article 155 of the Criminal Code, which concerns illegal interference with practising religion, stipulates that illegal interference with worship or other religious practice through violence or threat of violence or accompanied by abuse of religious feelings of believers or ministers of religion, shall be punished with fine or correctional labour for a term not exceeding one year or deprivation of liberty for a term not exceeding two years.

Greece

22. Greece stated that the Government has adopted a legislative, regulatory and judicial system that guarantees the protection of religion or beliefs, as well as the prohibition of discrimination, hostility or violence based on religion. The Constitution of Greece prohibits, in article 2, discrimination on various grounds, including religion or beliefs.

23. Law 97/1979 as amended criminalizes offences aimed at discriminating and penalizes acts that will fully and publicly either orally or by the press or by written texts or through depictions or any other means, incite to acts or activities which may result in discrimination, hatred or violence against individuals or groups of individuals on the sole grounds of the latter's racial or national origin or religious belief. It is also a penal offence to express publicly either orally or by the press or by written texts or through depictions or any other means offensive ideas against any individual or group of individuals on the grounds of race, national origin or religious belief.

The Islamic Republic of Iran

24. The Islamic Republic of Iran stated that it noted an increase in incidents of intolerance and discrimination against Muslims and insults against Islam, which, in its view, have become pervasive and are often condoned in certain countries and communities. The "conflation of race, culture and religion" and the fight against terrorism are among the factors that "provide fertile soil for defamation of religions", according to the submission of Iran. To confirm this trend, it cites the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance at the sixth session of the Human

Rights Council,[4] which stated that "the increasing trend in defamation of religions cannot be dissociated from a profound reflection on the ominous trends of racism, racial discrimination, xenophobia and related intolerance". The Islamic Republic of Iran submitted that "freedom of expression cannot be used as a pretext or excuse for incitement to racial or religious hatred". It also decried the "intellectual justification" of insults against Islam, which are sometimes endorsed in political platforms, and the indifference of Governments and other authorities towards these actions.

25. The Islamic Republic of Iran asserts that intolerance and discrimination on the basis of religion are inconsistent with the spirit of the Charter of the United Nations and relevant General Assembly resolutions,[5] all of which seek to promote peaceful coexistence among nations. Furthermore, according to Iran, the Universal Declaration of Human Rights (articles 1 and 2) and article 26 of the International Covenant on Civil and Political Rights clearly impose a legal obligation on States to eliminate discrimination and protect against intolerance. Iran also maintains that the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights, in particular the provision of article 20 (2) which prohibits "the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", affirm that freedom of speech entails duties and responsibilities and is subject to limitations. In this connection, Iran referred to the Human Rights Council General Comment No. 11, which recognizes that the limitations in article 20 (2) are compatible with the right to freedom of expression in article 19 of the International Covenant on Civil and Political Rights. According to Iran, the provisions of the International Covenant on Civil and Political Rights against incitement to religious hatred are legitimate safeguards against abuse of the right to freedom of expression.

26. Iran also referred to the 2001 World Conference against Racism, held in Durban, South Africa, and the unequivocal statement in the Durban Declaration and Programme of Action that "the dissemination of all ideas based upon racial superiority or hatred shall be declared an offence punishable by law". This statement, according to Iran, is consistent with article 4 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination, which, Iran states, places "an obligation upon states to be vigilant and proceed against organizations that disseminate ideas based on racial superiority or hatred, acts of violence or incitements to such acts". Iran concluded that the right to freedom of expression should be exercised with the responsibilities and limitations prescribed by law and that the international community should initiate a global dialogue to promote a culture of tolerance and peace based on respect for human rights and cultural diversity. To illustrate the importance that it attaches to the fight against racism, Iran cites several initiatives that it has taken in the last few years, including hosting of the 2007 Ministerial Conference on Human Rights and Cultural Diversity.[6]

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[4] A/HRC/6/6.

[5] The Islamic Republic of Iran referred specifically to General Assembly resolutions 62/154 on combating defamation of religions, and 55/23, on dialogue among civilizations, as well as Security Council resolution 1624 (2005).

[6] The Islamic Republic of Iran submitted the same contribution to the request for information pertaining to the implementation of Human Rights Council resolution 7/19 and General Assembly resolution 62/154.

Lebanon

27. Lebanon stated that the Directorate for Public Security monitors all forms of media in order to prevent provocation based on various grounds, including racial and religious. Lebanon also stated that its monitoring of the media is intended to prevent the dissemination of information that could incite religious hatred and/or endanger its external relations with other countries or its integrity and security.

Oman

28. The Sultanate of Oman stated that its penal code comprises articles prohibiting defamation of religions and faiths and is punishable by law. In particular, reference is made to article 130 bis which states that any person who promotes or incites religious or sectarian conflicts or theorems of hatred or strife among the population shall be punished by imprisonment for a maximum of 10 years. Article 209 of the penal code stipulates that it is a criminal offence to commit an affront to religions and faiths with a view to causing contempt.

Russian Federation

29. The Russian Federation referred to several pertinent provisions in its Constitution which concern freedom of religion and non-discrimination. In particular, the Russian Federation stated that article 18 guarantees equality of rights and liberties regardless of attitude towards religion. Article 28 guarantees the right of everyone to freedom of religion and conscience, including the right to profess any religion or to profess no religion and to freely choose, hold and disseminate religious or other beliefs and to act in conformity with them.

30. Under article 13, the Constitution prohibits the establishment and activities of public associations whose aims and actions are directed at incitement of religious strife. Article 29 prohibits propaganda of religious superiority and campaigns to incite religious hatred. Article 29 also stipulates that freedom of the mass media is guaranteed and that censorship is prohibited. However, freedom of the mass media shall not be abused to incite religious intolerance or strife.

31. The Russian Federation also made reference to several pieces of legislation in which the above constitutional provisions are further developed, including the Criminal Code. In this regard articles 63, 117, 111, 105, 280, 282 and 239 of the Criminal Code concern crimes involving religious hatred and strife; articles 2, 3 and 86 of the Labour Code concern discrimination based on religion. The Russian Federation also referred to article 3 of the Federal Law on Freedom of Conscience and on Religious Associations of 26 September 1997.

32. Specific references are made to the Federal Law of 25 December 2002 on counteracting extremist activities and amendments thereto of 2006 and 2007, which extensively deal with issues related to incitement of religious strife and hatred, including identifying cases in which registration of religious associations by the State could be refused. Statistics are also provided with regard to the number of sentences issued in connection with religion-related crimes. Reference is also made to the role and activities of civil society to counteract nationalism, xenophobia and religious strife.

Qatar

33. Qatar stated that it is concerned about incidents involving defamation of religions as it holds as a fundamental principle respect for all religions and their symbols. Qatar is of the view that the best approach to prevent defamation of religions is through cross-religion dialogue, thereby ensuring that different religious communities are sens tized to the values of each other. Towards this end, and since 2003, Qatar organizes every year international conferences on dialogue on religions. The sixth one was convened in May 2008. The highest level of leadership of the State maintains a particular interest in preventing defamation of religions and in this regard opened the first and second conferences and delivered messages which concluded that the problems surrounding religious intolerance stem from behaviours of just a few perpetrators. He specified that Muslims, Christians and Jews had lived in peace for centuries and that the clash between the three religions is directly connected to the Israeli-Arab conflict.

34. The conferences made several recommendations, including on measures that could serve to foster tolerance, and that the media and school curricula should be devoid of negative and stereotyping information concerning any of the three religions and that terrorism is not to be connected to any one religion. The conferences also recommended respect for the symbols of religions and places of worship without contradicting the right to freedom of expression. In this connection, the conferences called on the United Nations to develop a new instrument/convention that could address issues connected to respect for all religions and their symbols and limit the dissemination by the mass media, the arts and curricula of misinformation on religions.

United States of America

35. According to the United States, the concept of "defamation of religions" is not supported by international law and efforts to combat "defamation of religions" typically result in restrictions on the freedoms of thought, conscience, religion and expression. The United States asserted that from a legal perspective, the "defamation of religions" concept is deeply problematic since under existing human rights law, individuals — not religions, ideologies, or beliefs — are the holders of human rights and are protected by the law. However, the concept of defamation of religions seeks to convey the idea that a religion itself can be a subject of protection under human rights law, thereby potentially undermining protection for individuals.

36. The United States stated in addition that a defamatory statement (or other communication) is more than just an offensive one. It is also a statement that is false. Because one defence to a charge of defamation is that the statement is in fact true, the concept does not properly apply to that which cannot be verified as either true or false, such as statements of belief or opinion. Even offensive opinions and beliefs are not defamatory. It is also unclear how defamation could be defined considering that one individual's sincere belief that his or her creed alone is the truth inevitably conflicts with another's sincerely held view of the truth.

37. The United States further submitted that even if a defamation standard were to be legally enforceable, and even if it could be enforced in an equitable manner, it would lead to numerous legal claims and counterclaims between majority and minority religious communities or dissenting members of a faith. Instead of fostering tolerance, such a standard would almost certainly lead to greater conflict

and intolerance. What is considered to be a sacred statement by one may be viewed as sacrilegious to another, and could therefore be legally actionable as a "defamation of religion".

38. Regarding freedom of expression, the United States expressed the view that government should not prohibit or punish speech, even offensive or hateful speech, because of an underlying confidence that in a free society such hateful ideas will fail because of their own intrinsic lack of merit. However, freedom of expression that threatens the public good is not absolute, prohibitions are restricted to forms of expression that threaten the public good by, for example, inciting imminent violence or other unlawful activity; expression is not restricted merely for being offensive.

39. The United States agreed that more must be done to promote inter-religious understanding and believes concrete action supporting tolerance and individual rights is the best way to combat abusive actions and hateful ideologies.

B. United Nations human rights mechanisms and treaty bodies

40. While noting that other treaty bodies may have explicit competence to address religious discrimination, the Committee on the Elimination of Racial Discrimination has had numerous occasions to address double discrimination on the ground of race and religion, and has stressed the "intersectionality" of racial and religious discrimination and recommended that religious discrimination, including that against immigrant religious minorities be likewise prohibited. Furthermore, the Committee on the Elimination of Racial Discrimination reminded States that they should ensure that all persons enjoy their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent or national or ethnic origin, in accordance with article 5 (d) of the Convention.

41. When examining periodic reports, the Committee on the Elimination of Racial Discrimination has expressed its concern about reported cases of Islamophobia following the 11 September attacks. Furthermore, while taking note that the criminal legislation of some States includes offences where religious motives are an aggravating factor, it has regretted that incitement to racially motivated religious hatred is not outlawed. The Committee has recommended that States give early consideration to the extension of the crime of incitement to racial hatred to cover offences motivated by religious hatred against immigrant communities.

42. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance submitted his report at the ninth session of the Human Rights Council[7] pursuant to resolution 7/19, in which the Council invited the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to continue to report on all manifestations of defamation of religions, and in particular on the serious implications of Islamophobia for the enjoyment of all rights to the Council at its ninth session.

43. The report of the Special Rapporteur examined the phenomenon of Islamophobia. In it, the Special Rapporteur synthesized and updated the analysis, conclusions and recommendations on defamation of religions that he had already

[7] A/HRC/9/12.

provided in various reports to the Human Rights Council and to the Commission on Human Rights. In this latest report, the Special Rapporteur cautioned, however, against prioritization of efforts to combat all forms of discrimination and asserted that there can be no hierarchy in combating discrimination which targets various religions. He referred to his previous reports in which he remarked that the increase in anti-Semitism, Christianophobia and Islamophobia in various parts of the world, as well as the emergence of racial and violent movements based on racism and discriminatory ideas directed against Arab, Christian, Jewish and Muslim communities required, inter alia, the promotion of in-depth intercultural and interreligious dialogue.

44. The Special Rapporteur participated in a panel discussion held at the first substantive session of the Preparatory Committee for the Durban Review Conference on 22 April 2008. In accordance with decision PC.2/3 adopted by the Preparatory Committee, the panel discussed the objectives of the Durban Review Conference. On that occasion, the Special Rapporteur highlighted the need to shift the present debate on the sociological concept of "defamation of religions" to the notion of incitement to racial and religious hatred as contained in international instruments, particularly the International Covenant on Civil and Political Rights. The Special Rapporteur further highlighted that the main challenge facing Member States during the review process is to transcend the North-South divisions that have characterized the recent debates on racism and to understand that racism is a global problem affecting all countries.

45. At the invitation of the Government, the Special Rapporteur on freedom of religion or belief visited the United Kingdom of Great Britain and Northern Ireland from 4 to 15 June 2007. In her report on the visit, submitted at the seventh session of the Human Rights Council (A/HRC/7/10/Add.3), the Special Rapporteur presented an overview of the international human rights obligations and the domestic legal framework on freedom of religion or belief. She agreed with the Assembly of the Council of Europe, which recommended in its resolution 1805 (2007) that the Committee of Ministers ensure that national law and practice in member States of the Council of Europe be reviewed in order to decriminalize blasphemy as an insult to a religion.

46. The Special Rapporteur reiterated that a useful alternative to blasphemy laws could be to fully implement the protection of individuals against advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence according to article 20, paragraph 2, of the International Covenant on Civil and Political Rights.

47. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression issued a joint statement in Geneva on 28 March 2008, criticizing the provocative nature of a film depicting an extremely distorted vision of Muslims, and urging a calm and measured response to its release. The film *Fitna* illustrates an increasing pattern that associates Muslims exclusively with violence and terrorism.

48. The Rapporteurs stated that "While on the one hand, freedom of expression is a fundamental human right that must be respected, it does not extend to include incitement to racial or religious hatred, which is itself clearly a violation of human

rights. Public expressions that paint adherents of a particular religion as a threat to peace or global stability are irresponsible ... We recognize the quick and balanced reaction of the ... Government [of the Netherlands] to the release of this film in which it rejects the equation of Islam with violence and notes that the 'vast majority of Muslims reject extremism and violence' ... We believe that enhanced efforts to promote interreligious and intercultural dialogue may help to restrain any possible violent reaction".

C. United Nations bodies

Office of the United Nations High Commissioner for Refugees

49. In its contribution on the implementation of the resolution, the Office of the United Nations High Commissioner for Refugees (UNHCR) made the connection between defamation of religions and forced displacement. Defamation of religions, which foster intolerance and can result in harassment, attacks and persecution, can be a cause of flight. UNHCR stated that groups of people who belong to a minority religion or are of a particular ethnicity, for instance, may be forced to flee either within their country or to another as a result. Such groups and individuals may be associated because of their religion, ethnicity or other factors with actions perceived as defamation and face persecution as a result.

50. UNHCR submitted that where an individual fleeing persecution as a result of defamation of religions has a well-founded fear of persecution for a reason related to the refugee definition contained in the 1951 Convention relating to the Status of Refugees, this may in turn result in a need for international protection. In other situations, refugees and returnees may face problems integrating into new communities, for instance, if they are of a religious minority in their country of asylum or upon return and they are subject to intolerance by the community in which they now are because of their religious beliefs.

51. According to OHCHR, defamation of religions and the backlash which this has sometimes occasioned can have complex consequences. It can, for instance, hamper the delivery of assistance by humanitarian organizations, which may be associated by religious groups, for instance, with the nationality of a country where such defamation is reported to have taken place, including in the name of free speech. This may result in attacks on such individuals regardless of their commitment to the impartial delivery of assistance and therefore restrict the delivery of such assistance to displaced persons and others in humanitarian need.

Economic and Social Commission for Western Asia

52. The Economic and Social Commission for Western Asia (ESCWA) stated that it has witnessed a clear manifestation of defamation of religions in Western Asia in the growing rise of religious or rather sectarian tension in Western Asia. Exacerbating this state of affairs, aside from an array of political, social and economic factors, is the portrayal of religion or religious values as incompatible or opposed to human rights. In this regard, ESCWA, in partnership with a number of United Nations entities, including UNICEF, UNESCO and the Human Rights Office in the United Nations Assistance Mission for Iraq, have developed an initiative that seeks to address ethno-sectarian tension in the Arab world, which is based on the commonalities between religious, traditional, human rights and civic values.

Identifying these commonalities and projecting them in a culturally sensitive manner will serve to mitigate sectarian tension, as well as curtail defamation of religions in the region.

53. According to ESCWA, extensive research, wide consultations and creativity in identifying, articulating and presenting the commonalities between the concepts of human rights and citizenship on the one hand and cultural and religious values on the other will be undertaken. The strong analytical component of the initiative serves also to address the root causes of current sectarian tension and identify realizable and home-grown mitigating measures. The outcome of the aforementioned process will then be introduced into the mainstream culture, especially among Arab youth. This will be achieved through the production of non-formal educational material (books, board games, etc.), toolkits and communications campaigns, and training of concerned public servants and civil society activists in the utilization of these tools.

54. The main direct beneficiaries or targets of the initiative are Iraqi and Arab adolescents (12-15 and 15-18 years old). The initiative pays particular attention to women and to gender concerns. The initiative will also benefit educators from public and civic institutions, which include educators from the formal and informal education system.

D. Regional organizations

Organization of the Islamic Conference

55. The Organization of the Islamic Conference (OIC) sent to OHCHR, as its contribution, the updated version of the "OIC Observatory Report on Islamophobia" for the period of May 2007-May 2008. In the report, the OIC expresses utmost concern regarding the continued attacks by a section of marginal groups and individuals in the West on the most sacred symbols of Islam. According to the OIC, the manifestations of Islamophobia cited in the report provide sufficient evidence of the rising trend of Islamophobia in parts of the Western world.

56. The OIC submitted that the instances quoted or referred to in the report corroborate that marginal Western groups and individuals, motivated by hatred and intolerance against Muslims and Islam, remain unabated in acts of provocation and incitement of religious intolerance by misuse or abuse of the right to freedom of expression. The need to address this issue through the adoption of an adequate international instrument is underscored in the report. In the report the OIC highlights actions undertaken by the OIC General Secretariat to raise the awareness of the international community of the dangers of Islamophobia by engaging with Western interlocutors. It argued that Islamophobia reveals not only a campaign of religious intolerance but a new form of racism.

57. Regarding positive developments, the OIC also submitted that statements of some Western political leaders and think tanks, including research institutions, indicate the recognition in the West that Islamophobia is an issue of concern. The report concludes that OIC member States may continue to vigorously pursue their efforts to combat Islamophobia at the multilateral and bilateral levels.

Council of Europe

58. The Council of Europe stated that it is committed to non-discrimination and tolerance. Freedom of religion is one of the foundations of democratic society and protected under article 9 of the European Convention on Human Rights. The Council emphasized that article 9 protects the rights of individuals and cannot therefore be construed as protecting a religion as such from verbal attacks.

59. The Council provided some examples of its activities reflecting the aims of General Assembly resolution 62/154. They include activities undertaken by the European Commission against Racism and Intolerance which cover measures to combat violence, discrimination and prejudice faced by persons or groups of persons. The Commissioner for Human Rights regularly investigates the role that major monotheistic religions can play in disseminating and promoting human rights. A White Paper on Intercultural Dialogue was launched by the Committee of Ministers in May 2008. The White Paper reasons that the intercultural approach offers a forward-looking model for managing cultural diversity. The Council also contributes to the "Alliance of Civilizations" and has concluded a memorandum of understanding with the Alliance to strengthen cooperation.

E. National human rights institutions

Australian Human Rights and Equal Opportunity Commission

60. The Australian Human Rights and Equal Opportunity Commission submitted a report on the issue of combating the defamation of religions. In the report, the Commission stated that since the events of 11 September 2001, Australia, like so many other countries, had faced numerous dilemmas. The Commission raised many points. In summary, with regard to the issue of defamation of religions, in particular, it expressed the following views: it is concerned about some of the wording, focus and omissions of General Assembly resolution 62/154, but supports the broad rationale and goals that informed it; the Commission condemns all forms of violence and endorses the idea that the "civil path to peace" across the world is one that must be taken within the framework of human rights; given the extreme complexity of the issues, novel approaches should be used to find solutions to existing and emerging problems; there is a role for national human rights institutions in the area of counter-radicalization, terrorism, and the defamation of religions.

61. The Commission highlighted the risks faced by national human rights institutions, which must walk a difficult path between the competing aspects of promoting and protecting human rights, condemning violence, supporting communities, monitoring security measures, and informing policy development. It is using a whole-of-community/partnership model, based on the methodology of health promotion and the principles of human rights, to respond to this complex environment.

National Commission on Human Rights of Mexico

62. The National Commission on Human Rights of Mexico stated that there is no major obstacle in Mexico to the enjoyment of the right to freedom of religion. However, there are situations that still require improvement. The Commission

submitted a document in which it listed the actions taken to strengthen the observance of the right of freedom of religion for the period from January 2003 to June 2008. During that period, the Commission received 22 complaints related to religious intolerance or discrimination on religious grounds and it issued eight recommendations to the Government on measures which could serve to improve the situation. It organized 19 training sessions and 12 dissemination campaigns with the participation of 52 non-governmental organizations with a view to combating discrimination based on religion and supporting tolerance.

F. Non-governmental organizations in consultative status with the Economic and Social Council

63. One of the non-governmental organizations (NGOs) stated that in order to properly understand the philosophy behind "defamation of religions", it is instructive to go to the source, in this case, the countries of the Organization of the Islamic Conference, which have designed the concept. According to this NGO, an examination of the OIC conception of human rights in the areas of religious freedom and expression shows a distinct conflict with the international bill of human rights. The implementation of domestic laws to combat defamation of religions in many of those countries is said to reveal a selective enforcement towards religious minorities for violations.

64. The NGO recognized that the religious believer usually holds certain objects of belief to be of a sacred nature, and that proper respect for religions helps individuals to exercise their right to practice their religion freely. However, the NGO submitted, a clear line should be drawn between valid criticism of religion or religious practices and speech that does not serve any purpose except to offend the sacred beliefs of individuals or religions. In this regard, the NGO asserted that OHCHR and the United Nations must not allow the narrow model of "defamation of religion" to become the international standard, but should look instead to article 20 of the International Covenant on Civil and Political Rights as the proper framework to consider the issue and develop guidelines for clear application of laws that seek to protect religious beliefs.

65. Another NGO submitted that while "freedom of religion or belief has its limits, laws and mechanisms of exception targeting specific groups or that are meant to prevent so-called 'sectarian deviations' are not the right answer to perceived possible dangers". The organization reports that over the last 10 years France has been repeatedly criticized at the United Nations and at the Organization for Security and Cooperation in Europe for fostering religious intolerance and discrimination. The organization cites the examples of anti-sect parliamentary commissions that have been set up over the last 10 years in the country, the publication of reports stigmatizing small religious groups, and the adoption of laws specifically targeting them.[8]

66. An NGO expressed concern over the impact of blasphemy legislation on freedom of expression and freedom of religion, including on those who do not

[8] The same contribution was submitted in response to the request for information pertaining to the implementation of Human Rights Council resolution 7/19 of 27 March 2008 and General Assembly resolution 62/154.

practise the predominant religion in a Member State. In this connection, the NGO recommended to the Human Rights Council that the study requested in resolution 7/19 should include (a) an examination of existing blasphemy legislation, and (b) an assessment of the implications for human rights of defamation of religion legislation. The NGO also recommended that a resolution be submitted to call on the States where blasphemy constitutes a capital offence to remove the death sentence as a penalty. Additionally, the NGO suggested that United Nations bodies considering the question of defamation of religions should adopt a similar position as the Council of Europe, where freedom of expression is given much greater weight.[9]

67. Another NGO submitted a contribution which provides a general comment on resolution 7/19 and a sample of cases of individuals whose fundamental rights have been severely restricted by the application of legislation aimed at combating insult to religions. According to the NGO, the existence of legislation aimed at protecting religions from defamation can exacerbate religious tensions and could be abused to dampen legitimate criticism. It is for that reason that it is deeply disappointed with the adoption by the Council of resolution 7/19.[9]

68. An NGO stated that "defamation of religions" as a title simply cannot make sense, as there can be no defamation of an idea one holds to be truth. It needs to be changed to something less confusing, such as "the protection of religious freedom". The NGO asserted that the resolution should reaffirm the standards for protecting freedoms of thought, conscience and belief under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. According to the NGO the resolution (a) needs to emphasize laws protecting individuals who express viewpoints and practices, thereby encouraging religious freedom; (b) should more expressly protect all religions from intolerance, not just Islam; (c) make a distinction between using religion to incite violence versus creating dialogue or offensive speech which may offend, but not harm, the listener.

69. A group of NGOs submitted in their contribution that freedom of religion should be protected systematically and without discrimination with regard to all individuals and groups. In this regard, they stated that there should be no priority given to any particular religious group or community and that this approach could only serve to reduce the universality of the right to freedom of religion and belief. The group asserted that defamation, incitement and intolerance should not be dealt with through criminal sanctions. Instead, the media, education and intercultural dialogue can be very instrumental in promoting understanding among communities of different faiths.

70. An Association submitted that although there are serious practical difficulties of definition, of legitimate exceptions or defences regarding the term "defamation of religions", the Association believes that speech designed to incite or that is patently liable to incite hatred of people on the basis of their beliefs and thus to make violence against them more likely should be outlawed. Such hatred may indeed be targeted on the basis of religion but it may equally be based on race, nationality, sexuality or some other ground.

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[9] The same contribution was submitted to the request for information pertaining to the implementation of Human Rights Council (HRC) resolution 7/19 of 27 March 2008 and General Assembly resolution 62/154 of 18 December 2007.

71. The Association expressed the view that insult to the feelings of believers is another matter. Here the feelings exacerbated are not those of potential attackers but of the subjects ("victims") themselves. There is no intent on the part of those expressing their views to incite hatred, nor is it clearly likely that hatred will be incited. Instead, the religious believers object to expressions of criticism of their religion. They entertain and are perhaps encouraged to foster sensitivity to criticism of their religion as a religious duty or manifestation of piety. The Association submitted its conclusion that the feelings of religious believers cannot safely be protected.

III. Conclusion

72. The General Assembly in its resolution 62/154, which forms the basis of the present report, requests that the report on the implementation of the resolution include the possible correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world.

73. The replies presented in the present report indicate that States' constitutions frequently protect freedom of religion and prohibit discrimination against religions and on the basis of religious belief. Through the replies, concern is expressed as to the negative portrayal in the media of religions and in particular Islam. Similarly discrimination on the basis of religion, incitement and intolerance against an individual or group because of religion is also prohibited in the States that responded. Some States have specific provisions in their criminal codes that provide sanctions for discrimination and in particular incitement to hatred on various grounds. While in some States the terminology "incitement" is used, in others, sanctions are imposed on conduct that amount to interference with worship or religious practice through violence or threat of violence or accompanied by abuse of religious feelings of believers or ministers of religion. The desecration, damage or destruction of places of worship, religious symbols and other items related to religion are also criminalized.

74. Some replies addressed the tension that exists between freedom of religion and freedom of expression. Some States are unequivocal as to the special duties and responsibilities that are attached to the exercise of freedom of expression, subject to limitations as provided for by law and as necessary for respect of the rights or reputations of others, protection of national security or of public order, public health or morals and respect for religions and beliefs. But overall, the replies showed differences in interpretation on this issue.

75. Most of the replies which speak of defamation of religions do not reveal a common understanding of what is considered defamation of religions. Other replies suggested that the provisions of the international human rights instruments, particularly the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, provide an appropriate and adequate basis on which the legal and policy responses to incitement to hatred and violence, in particular, can be constructed.

76. At the national level, the reported laws and comments on defamation of religions refer to different phenomena and appear to apply various terms, such as contempt, ridicule, outrage and disrespect, to connote defamation. One State

asserted that defamation of religions constitutes a form of incitement to religious hatred, hostility and violence against followers of these religions, which in turn leads to the denial of their fundamental rights. According to another State, the concept of defamation of religions is not supported by international law and a religion itself cannot be a subject of protection under human rights law as this would potentially undermine protection for individuals.

77. A comprehensive review of trends and patterns would be required to establish how and where incidences of religious defamation and incitement to racial and religious hatred are manifested and thereby establish the correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world. The results of such a comprehensive review would help to evaluate the effectiveness of the existing international legal framework, as well as determine conditions facilitating dialogue and joint action for social harmony, peace, human rights and development, and for combating all forms of racism, discrimination and xenophobia.